

MT LEGISLATIVE HISTORY

Chapter 519 1975

Bill (H) 528 S _____

Original bill & hist. ____C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 19 ✓C

Hearing Date(s) Mar 18 ✓C

Feb 24 ✓C

Mar 25 ✓C

____C

BEST COPY
AVAILABLE

Apr 01 ✓C

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Date Out _____C

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

Spurck *M. Fadden* *Palmer*
House BILL NO. 528
 INTRODUCED BY *Richards* *Scully* *William*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SMALL CLAIMS COURTS IN THE STATE OF MONTANA."
Freeman *Federico* *Travis* *Billings* *Hobbs* *Lucbeck* *FAGG* *Hammis* *Shelden* *Heremi* *Day* *Gray* *Wynn*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 Section 1. Small claims court authorized. There may

be created within the jurisdiction of the district court of any county of the state of Montana a separate court, known as the "Small Claims Court".

Section 2. Creation of small claims court. A small claims court may be created by an order of the district court or a resolution passed by the board of county commissioners or by county initiative as provided in Title 37, chapter 3, R.C.M. 1947. Upon such order or passage of the resolution or initiative, the judge of the appropriate judicial district shall, by court order, establish a small claims court under the provisions of this act. When the order is filed with the clerk of the district court of the appropriate county the clerk of the district court becomes the clerk of the small claims court.

Section 3. Duration of small claims court. A small claims court created under this act continues in existence until abolished by resolution of the board of county

commissioners of the appropriate county.

Section 4. Appointment of judge -- salary -- qualifications. (1) The judges of the judicial district in which a small claims court has been created shall appoint a judge of the small claims court who shall:

(a) take the oath required of judges;

(b) serve at the pleasure of the district court judges;

(c) be paid a salary set by the board of county commissioners but not less than ten thousand dollars (\$10,000) per year; and

(d) be an attorney licensed to practice law in the state of Montana.

(2) The judge of the district court may appoint more than one (1) small claims court judge for any small claims court and the salary shall be prorated among the judges appointed.

Section 5. Location--office hours--duties of judge. The small claims court shall be located in the courthouse of the appropriate county and shall be open during all judicial days and during regular office hours. In the event that more than one (1) small claims court judge has been appointed, the judges so appointed may divide their responsibility hereunder. The small claims court judge shall assist any claimant in preparing an affidavit or may

1 direct the clerk of court to provide such assistance.

2 Section 6. Multi-county small claims courts. Where
3 there is more than one county in the judicial district and
4 the county commissioners of more than one county in that
5 district create small claims courts, the district judges may
6 provide that the same judge of small claims court may
7 preside over more than one of the small claims courts in the
8 judicial district. In such cases the salary of the small
9 claims court judge shall be prorated among the counties in
10 which he presides. The judge shall be entitled to collect
11 mileage for the distance actually traveled when required to
12 convene small claims court in more than one county, pursuant
13 to section 59-801.

14 Section 7. Act to be liberally construed. It is the
15 purpose of this act to provide a speedy remedy in claims
16 falling hereunder, and to promote a forum in which such
17 claims may be heard and disposed of without the necessity of
18 formal trial. For this reason, the provisions hereof should
19 be liberally construed to provide an informal, but
20 equitable, means of justice, and the judges appointed
21 hereunder are required to assist all parties before them to
22 obtain substantial justice.

23 Section 8. Jurisdiction. (1) The small claims court
24 has original jurisdiction in all actions for the recovery of
25 money or specific personal property when such action arises

1 out of a contract, express or implied, and the amount of the
2 claim, exclusive of costs, does not exceed one thousand
3 dollars (\$1000). More than one (1) claim may be joined, if
4 all claims joined would separately meet the requirements for
5 jurisdiction in the small claims court and the total value
6 of money claimed or property sought does not exceed one
7 thousand dollars (\$1000).

8 (2) A district court judge may require any action
9 filed in district court to be removed to the small claims
10 court, if the amount in controversy does not exceed one
11 thousand dollars (\$1000). The small claims court shall hear
12 any action so removed from the district court.

13 Section 9. Parties -- representation. (1) Parties in
14 the small claims court may be individuals, partnerships,
15 corporations, unions, associations, or any other kind of
16 organization or entity.

17 (2) No party shall be represented by an attorney in
18 the small claims court.

19 (3) An individual shall represent himself in the small
20 claims court. A partnership shall be represented by a
21 partner or one of its employees. A union shall be
22 represented by a union member or union employee. A
23 corporation shall be represented by one of its employees.
24 An association shall be represented by one of its members or
25 by an employee of the association. Any other kind of

1 organization or entity shall be represented by one of its
2 members or employees.

3 (4) Only a party, natural or otherwise, who has been a
4 party to the transaction with the defendant for which the
5 claim is brought may file and prosecute a claim in the small
6 claims court.

7 (5) No party may file an assigned claim in the small
8 claims court.

9 (6) No party shall file more than two claims within
10 any calendar week nor more than ten claims in any calendar
11 year in the small claims court.

12 (7) Notwithstanding any other provision of this
13 section, an executor or administrator of a decedent's
14 estate, a guardian, or a conservator may be a party in the
15 small claims court.

16 Section 10. Venue. Proper venue for actions commenced
17 in small claims court is the same as that provided by law
18 for civil actions commenced in district court.

19 Section 11. Commencement of actions. Actions in small
20 claims court shall be commenced by filing an affidavit with
21 the clerk of court. The clerk of court shall provide forms
22 for the affidavits, which shall be in substantially the
23 following form:

24 "In the Small Claims Court of the _____ Judicial
25 District in and for the County of _____, State of

1 Montana.

2 _____,
3 Plaintiff

4 vs.

5 _____,
6 Defendant

Doc. _____ No. _____

PLAINTIFF'S COMPLAINT,
NOTICE TO DEFENDANT,
SEEKING MONEY DAMAGES

8 Plaintiff states that defendant(s) owe and should be
9 ordered to pay to me the sum of _____, because on
10 _____ at _____, the defendant(s)
11 (date) (place)

12 _____
13 _____

14 Plaintiff declares that the defendant or defendants are
15 not a "person in military service" or "person in the
16 military service of the United States" as defined in Sec.
17 101 of the Soldier's and Sailor's Relief Act, 1940.

18 I have filed _____ small claims within the past calendar
19 week.

20 I have filed _____ small claims within the past calendar
21 year.

22 To the best of my knowledge and belief, the defendant named
23 above resides at the following address, or the following is
24 the business address:

25 _____
26 _____

27 My printed name and printed address are as follows:

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I elect to have the notice served upon the defendant personally by mail.

Signed in my presence Signature: _____

Clerk or Deputy Today's date: _____

NOTICE TO DEFENDANT

This claim has been filed against you. You must appear before this court on _____ at _____ at _____
(date) (time) (location)

If you do not appear, a judgment may be entered against you. Costs of the action also may be charged against you. You should read the information on the back of this claim and notice. If you have any questions about the procedure, you may contact the Clerk of the Court in person at

(location of court)
or by telephone at _____.
(number)

Clerk of the Court

By: _____

Section 12. Order of court--contents. (1) Upon filing the affidavit and payment of the fee hereinafter provided, the clerk of court shall cause to be delivered to the

sheriff of the county of the defendant's residence a copy of the affidavit together with the original and a copy of an order issued by the court, directed to the defendant, and directing the defendant to pay the claim set forth in the affidavit, or deliver up the property described, or, in the alternative, to appear and answer the claim set forth in the affidavit.

(2) The order shall:

(a) specify the time, date, and place set for hearing the claim;

(b) state that if the defendant fails to appear at the hearing and has not satisfied the claim, judgment will be entered against him in the amount or for the relief claimed, for costs; and

(c) be signed by the clerk of court and bear the seal of the court.

Section 13. Service on defendant. The original order shall be shown to the defendant and a copy of it along with a copy of the affidavit shall be served upon the defendant by the sheriff in the same manner provided by law for service of process in civil actions in district court. The provisions of law relating to sheriff's fees are applicable to this section.

Section 14. Hearing date--how set. The date for the appearance of the defendant to be set forth in the order

1 shall be determined by the clerk of court in accordance with
2 rules adopted by the small claims judge, and shall not be
3 more than thirty (30) nor less than ten (10) days from the
4 date of the order. Service of the order and copy of the
5 affidavit shall be made upon the defendant not less than
6 seven (7) days prior to the date set for his appearance by
7 the order. If the order is not timely served, plaintiff may
8 have a new appearance date set by the clerk and a new order
9 issued and delivered to the sheriff, and, if necessary,
10 repeated orders may be issued at any time within one year
11 after the commencement of the action.

12 Section 15. Return of service. The sheriff, after
13 effecting service, shall make return upon the original order
14 and file it with the clerk of court.

15 Section 16. Defendant's counterclaim -- answer.
16 (1) If the defendant wishes to assert a counterclaim
17 against the plaintiff he shall file a written answer setting
18 forth his counterclaim against the plaintiff and shall cause
19 the answer to be served upon the plaintiff not less than
20 seventy-two (72) hours before the date set for the hearing.
21 Service shall be made in the same manner in which service is
22 made upon the defendant.

23 (2) A counterclaim or set-off may not exceed one
24 thousand dollars (\$1000). If a counterclaim or set-off is
25 asserted in excess of one thousand dollars (\$1000), the

1 jurisdiction of the small claims court over the plaintiff's
2 claim is not defeated, but the court shall limit its
3 determination of the counterclaim or set-off only to the
4 question of whether plaintiff's claim is discharged thereby,
5 leaving defendant to prosecute the balance of his claim in
6 appropriate district court action.

7 Section 17. Attachment--execution. Attachment or
8 prejudgment garnishment is not available in actions brought
9 in small claims court. Proceedings to enforce or collect a
10 judgment are governed by the laws relating to executions
11 upon district court judgments.

12 Section 18. Proceedings informal--court reporters. If
13 the action is tried to the court, the proceedings shall be
14 informal to the extent possible in order to dispense speedy
15 justice to the parties. In cases tried to the court a
16 reporter is not necessary unless the judge finds the issues
17 sufficiently complex that a record is desirable, in which
18 case he shall make arrangements with a court reporter of the
19 district court to take the testimony. The judge shall make
20 findings of fact sufficient to establish in full the basis
21 of his judgment, and shall file them with his judgment. If
22 a jury is empaneled, it shall try all issues of fact, and in
23 such case there shall be a court reporter.

24 Section 19. Evidence--subpoena power. Both parties
25 have the right to offer evidence, written and oral, and the

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1 judge may direct the production of evidence as he deems
2 appropriate. The small claims court has the subpoena power
3 granted to district courts in civil cases.

4 Section 20. Entry of judgment. Upon the conclusion of
5 a case tried to the court the judge shall make his findings
6 and enter judgment.

7 Section 21. Appeals. If either party is dissatisfied
8 with the judgment of the small claims court he may appeal to
9 the district court of the county where the judgment was
10 rendered, in the same fashion as appeals in other civil
11 actions. Any such appeal shall be tried de novo without a
12 jury.

13 In the event that the parties are represented by
14 counsel on appeal, the judge may grant the prevailing party,
15 in addition to costs, reasonable attorney fees.

16 Section 22. Fees--cost. (1) The clerk of court shall
17 collect a fee of five dollars (\$5):

18 (a) from the plaintiff upon the filing of the
19 affidavit;

20 (b) from the defendant upon the filing of a written
21 answer; and

22 (c) from the losing party upon the filing of a
23 judgment.

24 (2) The laws relating to paupers' affidavits apply to
25 actions before the small claims courts.

1 (3) The prevailing party in an action before the small
2 claims court is entitled to costs.

3 Section 23. It is the intent of the legislature that
4 if a part of this act is invalid, all valid parts that are
5 severable from the invalid part remain in effect. If a part
6 of this act is invalid in one or more of its applications,
7 the part remains in effect in all valid applications that
8 are severable from the invalid applications.

-End-

HB 670 -- In closing, Rep. Vincent stated that there would be no problem amending the bill in the future to adjust for inflation.

HB 108 -- HB 108, sponsored by Representative Orin P. Kendall, District 23, was heard next. He stated the purpose of the bill was to provide a vehicle for the disposal of partially wrecked or destroyed buildings. The bill authorizes local fire chiefs or fire marshalls to decide if a building should be demolished and provides for the cost of demolition.

Dan Mizner, Executive Director of the Montana League of Cities and Towns, spoke in support of the bill and stated that the bill was introduced at the request of his organization. He pointed out that old abandoned buildings are hazardous to children.

William Penttila, State Fire Marshall, stated that the bill was workable and that he supported it.

Don Kerns of the City of Helena spoke in support of the bill, stating that it would help cities and towns clean themselves up. He added that the bill was both workable and necessary.

HB 257 -- HB 257, sponsored by Representative James Moore of District 18, was heard next. In Rep. Moore's absence, Mr. Moody Brickett of the Employment Security Division spoke on the bill. The bill's purpose, he stated, was to enable the Employment Security Division to collect money for employees from delinquent employers. The bill would give the division powers presently held by I.R.S. in this area. He suggested an amendment for the bill on page 2 and presented copies of similar laws in other states (both attached).

Harold Kanseir, also of the Montana Employment Security Division, reiterated the remarks of Mr. Brickett and added his support for the bill.

There were no further proponents and no opponents to the bill.

HB 528 -- HB 528, sponsored by Representative Paul Richards of District 32, was heard next. He stated that the bill provides for the establishment of small claims in the State of Montana to handle suits involving claims under \$1,000. He stated that under the bill a small claims court may be created by 1) a district court, 2) a county or combination of counties, or 3) county initiative. He added that the bill provides a direct court system for direct informal citizen involvement.

Rep. John Scully, District 76, spoke in support of the bill and stated that he had worked closely with Rep. Richards in drafting the bill. He stated that the jurisdiction should be amended to be concurrent jurisdiction, and that a

HB 528 -- qualified judge was necessary. He stated that the Gallatin County Commissioners supported the bill and Judge Leslie of the 18th Judicial District also supported the bill because it would relieve the district courts of a part of their workload.

Ralph Nader, Consumer Advocate, spoke in support of the bill, adding that he has long advocated accessible small claims courts. He said that consumer rights must be linked with effective and inexpensive remedies: most Americans, he said, cannot take advantage of the court system because of the lack of time and money, two problems which small claims courts can mitigate. He stated that the committee should give scrutiny in the bill to 1) collection of judgements, 2) the danger of easy transfer to district courts, 3) the possibility of providing for an explanatory manual without technical language for citizens to use.

Rep. Robert Harper, District 88, stated that the bill would provide redress for consumers for claims for \$10.00 to \$350.00. He stated that neither party can hire a lawyer for the small claims court, and that the court would fairly consider the interests of both consumers and merchants.

Rep. Richards stated that Rep. Roberto Federico had asked him to communicate to the committee his (Rep. Federico's) strong support.

Michael Pichette of the Democratic Party stated that the party supported the small claims courts.

Winn Dowlin, Justice of the Peace in Yellowstone County stated that he supported the small claims court concept but could not support HB 528 as written. He pointed out that individuals can file their own cases in justice courts now. He stated that he was worried about the fact that the proposed small claims courts could be abolished so easily. In conclusion, he said that he felt justice courts could be made to do the same things as the small claims courts.

Rep. Richards stated in closing that there would be no need for duplication of facilities if the bill were enacted. He added that he would not mind if section 3 of the bill, regarding duration of the small claims court, were amended. He said that one of the bill's strong points was the fact that district court judges would be able to appoint small claims court judges on a part-time basis and small claims courts would have good lawyers on their benches as a result.

There were no further proponents and no opponents to the bill.

HB 412 -- HB 412, sponsored by Representative Mike Meloy of District 29, was heard next. He stated that the purpose of the bill was to conform 82-3402, R.C.M. 1947, the open meetings law,

ROLL CALL

Judiciary COMMITTEE

xSECOND x HALF - 44th~~3rd~~ LEGISLATIVE SESSION 1975

Date 3/18/75

[illegible]

ESS:

18, MAR. 75

[illegible]

0.0 0.1 0.2 0.3 0.4 0.5 0.6 0.7 0.8 0.9 1.0 1.1 1.2 1.3 1.4 1.5 1.6 1.7 1.8 1.9 2.0 2.1 2.2 2.3 2.4 2.5 2.6 2.7 2.8 2.9 3.0 3.1 3.2 3.3 3.4 3.5 3.6 3.7 3.8 3.9 4.0 4.1 4.2 4.3 4.4 4.5 4.6 4.7 4.8 4.9 5.0 5.1 5.2 5.3 5.4 5.5 5.6 5.7 5.8 5.9 6.0 6.1 6.2 6.3 6.4 6.5 6.6 6.7 6.8 6.9 7.0 7.1 7.2 7.3 7.4 7.5 7.6 7.7 7.8 7.9 8.0 8.1 8.2 8.3 8.4 8.5 8.6 8.7 8.8 8.9 9.0 9.1 9.2 9.3 9.4 9.5 9.6 9.7 9.8 9.9 10.0

ST. REP. DIST. 88

12. 4. 2008

SUPPORT? ✓

Co-Sponsor

"SMALL CLAIMS COURT"

NAME: David J. [unclear] DATE: 7/1/80

ADDRESS: 7017 - North E. [unclear]

PHONE: 443-4866

REPRESENTING WHOM? William S. [unclear]

APPEARING ON WHICH PROPOSAL: H525

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

MSP4 is the [unclear] has [unclear]

number [unclear] on the concept. MSP4 [unclear]

the concept in any form

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 25, 1975

The meeting was called to order by Senator Towe, Chairman, at 10:00 A.M. in Room 442 of the Capitol Building. Committee members present were Senators Towe, Cetrone, Warden, Brown, Turnage and Greely.

The following bills were discussed:

HB 528
HB 620
HB 153
HB 298

HB 528 -- Senator Greely moved to amend page 4, lines 12, 16 and 20, and page 10, lines 11 and 12 by striking \$1000 and inserting \$1500. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS ROBERTS AND DRAKE ABSENT.

Senator Greely moved to amend page 11, section 18 and add a new section 19 and renumber subsequent sections. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS ROBERTS AND DRAKE ABSENT.

Senator Greely moved to amend page 11 striking "without a jury" in the last sentence. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS ROBERTS AND DRAKE ABSENT.

Senator Brown moved to amend page 5 by striking subsection (2) lines 3 through 5. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS CETRONE AND TOWE VOTING NO AND SENATORS ROBERTS AND DRAKE ABSENT.

Senator Greely moved to strike subsection (6) on page 5. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE AND ROBERTS ABSENT.

Senator Turnage moved to strike the sentence on page 5, lines 8, 9 and 10. After discussion he withdrew the motion. Senator Turnage moved to strike subsection (3), page 5 in its entirety. After discussion he withdrew the motion. Senator Turnage then moved to strike the sentence on lines 8, 9 and 10 on page 5. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS CETRONE AND BROWN VOTING NO AND SENATORS DRAKE AND ROBERTS ABSENT.

Senator Greely moved to amend page 11, line 11 by inserting a new section 19. (See attached Committee Report). THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS BROWN, DRAKE AND ROBERTS ABSENT.

Senator Warden moved to reinsert the sentence on page 5, lines 8, 9 and 10. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS TURNAGE, ROBERTS AND DRAKE ABSENT.

HB 528 -- Senator Towe moved to insert on page 5, line 5, following "court", "except as set forth in subsection 3 herein". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS TURNAGE, DRAKE AND ROBERTS ABSENT.

Senator Greely moved to reinsert lines 10 and 11 on page 11. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE, ROBERTS AND TURNAGE ABSENT.

Senator Greely moved to strike the last sentence on page 11. WITH SENATOR CETRONE VOTING NO, THE MOTION CARRIED WITH SENATORS DRAKE, ROBERTS AND TURNAGE ABSENT.

Senator Cetrone moved to amend page 2, lines 8 and 9 by striking lines 8 and 9 in their entirety following "by". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE, TURNAGE AND ROBERTS ABSENT.

Senator Cetrone moved to amend page 1, lines 21, 22 and 23. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE, TURNAGE AND ROBERTS ABSENT.

Senator Brown moved that HB 528 be concurred in as amended. THE MOTION CARRIED WITH SENATORS TURNAGE, ROBERTS AND DRAKE ABSENT.

HB 620 -- Senator Greely moved the amendments presented by the Committee Researcher Pat Driscoll (See attached Committee Report). THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS DRAKE, TURNAGE AND ROBERTS ABSENT.

Senator Greely moved HB 620 as amended be concurred in. THE MOTION ON A ROLL CALL VOTE CARRIED WITH SENATOR BROWN VOTING NO AND SENATORS ROBERTS, DRAKE AND TURNAGE ABSENT.

HB 153 -- Senator Cetrone moved to amend page 3, line 22, following "minimum" by inserting "recommended". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS TURNAGE, DRAKE AND ROBERTS ABSENT.

Senator Warden moved to amend page 4, line 7 and line 10 following "minimum" by inserting "recommended". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE, TURNAGE AND ROBERTS ABSENT.

Senator Greely moved to amend page 5, line 7 following "and" by inserting "recommend". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE, TURNAGE AND ROBERTS ABSENT.

Senator Greely moved to amend page 1, lines 17 and 18 by inserting "and authorize" following "plans". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE, TURNAGE AND ROBERTS ABSENT.

ROLL CALL

Judiciary COMMITTEE

44tñ

~~SECOND HALF~~ - 43rd LEGISLATIVE SESSION 1975

Date. 3/25/79

[illegible]

SENATE COMMITTEE

JUDICIARY

Date 5/25/64 H/Room Bill No. 578 Time _____

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Secretary

Chairman

Motion: by Senator Greely, to amend page
of Senate 12, 16, and 30 and page 10
lines 11 and 12. (see attached
committee report)

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/25/48 Thursday Bill No. 535 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

W. P. Ryan
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Greely to amend page 1,
striking "outcast a play" in the first
sentence. (see attached committee report)

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/25/75 4/11/75 Bill No. 508 Time

NAME	YES	NO
THOMAS E. TOWE		X
JOE R. ROBERTS		
V.E. CETRONE		X
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Bill Robinson
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Brown to strike sub-
section (2), page 5, lines 3 through
5. (see attached committee report)

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/25/45 Hear Bill No. 528 Time

NAME	YES	NO
THOMAS E. TOWE	y	
JOE R. ROBERTS		
V.E. CETRONE	x	
MARGARET S. WARDEN	x	
ROBERT J. BROWN	y	
GLEN L. DRAKE		
JEAN A. TURNAGE	✓	
MICHAEL GREELY	x	

Will K. Ryan
Secretary

Thomas E. Lane
Chairman

Motion: Dep. Senator Greely to strike
subsection (b) on page 5.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/25/75 11:00 AM Bill No. 528 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE		X
MARGARET S. WARDEN	X	
ROBERT J. BROWN		X
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill Robyane
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Turnage to strike
the sentence on lines 8 & 10 on
page 5. (see attached committee report)

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE

JUDICIARY

Date 3/25/45 House Bill No. 538 Time _____

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN		
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill Robinson
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Greely to amend page
11 line 11 by inserting new language
and a new section 19 (see attached
committee report)

(include enough information on motion—put with yellow copy of committee report.)

Date 3/25/75HouseBill No. 528

Time _____

NAME

YES

NO

THOMAS E. TOWE

X

JOE R. ROBERTS

V.E. CETRONE

X

MARGARET S. WARDEN

X

ROBERT J. BROWN

X

GLEN L. DRAKE

JEAN A. TURNAGE

MICHAEL GREELY

X

Bill Rhyane
Secretary

Thomas E. Dine
Chairman

Motion: by Senator Warden to reinvest sentence
on Union R. 1, v 10, page 5

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE

JUDICIARY

Date 3/25/75 House Bill No. 527 Time _____

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE		
MICHAEL GREELY	X	

Jill Roberts
Secretary

Thomas E. Towe for
Chairman

Motion: by Senator Towe to amend page 5,
line 5 (see attached committee report)

(include enough information on motion—put with yellow copy of committee report.)

HOUSE COMMITTEE

JUDICIARY

Date 3/25/75HouseBill No. 528

Time _____

NAME

YES

NO

THOMAS E. TOWE

Y

JOE R. ROBERTS

W. E. CETRONE

Y

MARGARET S. WARDEN

X

ROBERT J. BROWN

Y

GLEN L. DRAKE

JEAN A. TURNAGE

X

MICHAEL GREENE

Y

Gill Robyans

Secretary

Thomas E. Towe

Chairman

Motion: by Senator Greely to reinvent
lines 16 and 17 on page 11

(include enough information on motion--put with yellow copy of
 committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/25/74 House Bill No. 528 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE		X
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE		
MICHAEL GREELY	X	

Jill Robyane
Secretary

Thomas E. Towe, Jr.
Chairman

Motion: by Senator Greely to strike the
last sentence on page 11.

(Include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/25/75 House Bill No. 528 Title _____

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE		
MICHAEL GREELY	X	

Jill Robyano
Secretary

Thomas B. Dine
Chairman

Motion: by Senator Cetrone to amend
page 2, lines 8 and 9 (see attached
committee report)

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/25/75 2/2/75 Bill No. 527 Title _____

NAME	YES	NO
THOMAS E. TOWE	✓	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	✓	
GLEN L. DRAKE		
JEAN A. TURNAGE		
MICHAEL GREELY	X	

Jill Robyane
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Cetrone to amend
page 1, lines 21, 22, & 23

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE

JUDICIARY

Date

3/25/75

Hearings

Bill No. 528

Time

NAME

YES

NO

THOMAS E. TOWE

X

JOE R. ROBERTS

V.E. CETRONE

X

MARGARET S. WARDEN

X

ROBERT J. BROWN

X

GLEN L. DRAKE

JEAN A. TURNAGE

MICHAEL GREELY

X

Bill Robyann
Secretary

Thomas B. Dine
Chairman

Motion:

by Senator Brown that HB 528
be concurred in as amended.

(Include enough information on motion—put with yellow copy of committee report.)

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
April 1, 1975

The meeting was called to order by Senator Towe, Chairman, at 11:00 A.M. in Room 442 of the Capitol Building.

The following Committee members met in Executive Session to consider action on HB 164 and HB 528: Senators Brown, Drake, Warden, Cetrone, Towe and Turnage.

EXECUTIVE SESSION

HB 164 -- Senator Drake moved to amend page 2, lines 8 through line 16 and line 17 by striking that material and the Labor and Employment Relations amendment. He also moved amendments to page 1, line 25 by inserting "or his authorized representative" following "industry" and page 2, line 6 by striking "inspect" and inserting "cause to be inspected". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS ROBERTS AND GREELY ABSENT.

Senator Turnage moved HB 164 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS ROBERTS AND GREELY ABSENT.

HB 528 -- Senator Cetrone moved to amend page 4, line 12. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS ROBERTS AND GREELY ABSENT.

Senator Warden moved to amend page 7, by striking lines 14 and 15. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS ROBERTS, GREELY AND DRAKE ABSENT.

Senator Turnage moved to amend the previous amendments by the Judiciary Committee, amendment 12, by striking on line 7 "upon a general denial". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS GREELY, DRAKE AND ROBERTS ABSENT.

Senator Turnage moved to amend page 12 by striking lines 10 and 11. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS GREELY, DRAKE AND ROBERTS ABSENT.

Senator Cetrone moved to reinsert lines 21 through 23 on page 5. WITH SENATOR GREELY PRESENT THE MOTION FAILED WITH TURNAGE AND CETRONE VOTING YES.

Senator Greely moved to strike lines 3, 4, 5 and 6 on page 7. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS TURNAGE, DRAKE AND ROBERTS ABSENT.

Senator Greely moved to amend page 5, subsection 3 by striking all "may" and inserting "shall". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE, ROBERTS AND TURNAGE ABSENT.

HB 528 -- Senator Cetrone moved HB 528 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE, ROBERTS AND TURNAGE ABSENT.

There being nor further business, the meeting adjourned.



Thomas E. Towe, Chairman

SENATE COMMITTEE JUDICIARY

Date 4/11/75 House Bill No. 528 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY		

Gill Roberts
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Bettrone to amend page
4, line 12 (see attached committee
report)

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE

JUDICIARY

Date 4/1/75 Laurel Bill No. 508 Time

NAME	YES	NO
THOMAS E. TOWE	V	
JOE R. ROBERTS		
V.E. CETRONE	Y	
MARGARET S. WARDEN	Y	
ROBERT J. BROWN	Y	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY		

Gill Roberts
SecretaryThomas E. Towe
Chairman

Motion: by Senator Warden to amend page 7,
striking lines 14 and 15

(include enough information on motion--put with yellow copy of
 committee report.)

SENATE COMMITTEE JUDICIARY

Date 4/1/75 House Bill No. 523 Time

NAME	YES	NO
THOMAS E. TOWE	<u>Y</u>	
JOE R. ROBERTS		
V.E. CETRONE	<u>X</u>	
MARGARET S. WARDEN	<u>X</u>	
ROBERT J. BROWN	<u>X</u>	
GLEN L. DRAKE		
JEAN A. TURNAGE	<u>X</u>	
MICHAEL GREELY		

Jill Lehman
Secretary

Thomas E. Dine Jr.
Chairman

Motion: by Senator Turnage to amend
previous amendment no. 12 (see
attached committee report)

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 4/1/75 Hear Bill No. 528 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY		

Bill P. Ryan
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Turnage to amend
page 12 by striking lines 10 and 11,

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE

JUDICIARY

Date 2/1/75 House Bill No. 528 Time _____

NAME	YES	NO
THOMAS E. TOWE		X
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN		X
ROBERT J. BROWN		X
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY		X

Jill Robinson
SecretaryThomas E. Towe
ChairmanMotion: by Senator Cetrone to amend lines
21 through 23 on page 5

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE

JUDICIARY

Date 4/1/75 Home Bill No. 528 Time _____

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE		
MICHAEL GREELY	X	

Bill Robyano
SecretaryThomas E. Towe TD
ChairmanMotion: by Senator Greely to strike lines
3 through 6 on page 7.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE

JUDICIARY

Date 4/1/75 House Bill No. 525 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS	X	
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE		
MICHAEL GREELY	X	

Bill Roberts
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Greely to amend page
5, subsection 3 by striking all
"MAV" and inserting "shall"

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 4/1/75 None Bill No. 528 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE		
MICHAEL GREELY	X	

Gill Roberts
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Cetrone that HB 528
be concurred in as amended.

(include enough information on motion--put with yellow copy of committee report.)

Representative Vincent, in closing, stated he is sorry to strike the last sections and he looks forward to the day when they will be introduced as separate bills. He feels we should get the candidates back to the people face to face instead of on TV and radio. The candidates and their issues should be decided on the merits, not the money spent. Money shouldn't be the only way a candidate can win.

Representative Meloy directed the question to Tom Winsor as to whether he was speaking for the committee or as a member of the committee and was told he was speaking as a member. Representative Meloy asked Tom Winsor if he was the witness who equated freedom of speech with donations and was told by Mr. Winsor that he did bring this up. Representative Meloy questioned if Mr. Winsor felt this puts the low income and middle income at a serious disadvantage to win an election to which Mr. Winsor replied that he felt at the time there was not an abuse of expenditures.

In answer to question by Representative Seifert Representative Vincent replied that there are some blatant discrepancies they will be changing in subcommittee. Following a few additional questions the hearing was closed.

HOUSE BILL NO. 528 Representative Paul Richards, District #32, is chief sponsor of this act providing for small claims courts in the state of Montana. He stated this bill is based in principle on HB 612 passed in the '74 session in the House but was killed in the Senate. He stated both lawyers and the people are having problems and he has tried to create a workable piece of legislation. The general philosophy is that for small financial claims there is little or no recourse for the people, they are lost in a legal world. This bill will create a people oriented direct legal system. He provides in the bill for three different ways to create a small claims court. Thirty four states have small claims court legislation which has varied considerably. This is definitely a unique bill.

Proponent Representative James Moore stated fundamentally this is a good piece of legislation. He does have some problems he can't cure this session. This bill is permissive, the biggest problem is whether local government will pick this up and use it. He stated there is a question of whether you can preclude an attorney from the small claims court. Part of the problem is that attorneys simply refuse to take cases where only \$200 or \$300 claim is involved.

Representative Federico, District #61, stated he feels the bill is a good thing for the people he represents. He would like to see in this bill a translation from English to Spanish. Would also like to see a night court for working people who don't want to take time off work.

Proponent Representative John Scully stated he was frustrated with the present justice of the peace system. He feels

there may be a constitutional problem of no jury trial at this level. He feels that the complaint form should be amended to read "complaint/affidavit" on the bill. He feels that with a \$1,000 level limit the people can decide which court they want.

Proponent Tom Winsor, representing the Montana Chamber of Commerce, stated they support this bill but urged some changes in it. (see prepared statement)

Proponent Rod Gudgel, representing the state pharmacists association, stated that after years of work they would be delighted with any piece of legislation that provides for small claims court. Proponent Representative Mike Meloy stated technically this is a good bill and he feels this function should be a function of the state, county and the public and that is what this bill does.

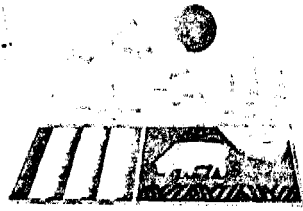
No other proponents. No opponents. Representative Richards, in closing, stated that initially he wanted a \$1500 limit but has revised this to \$1000. When he was elected he realized a tremendous cry to open up the system and judicial process.

Representative Lory questioned if this would put the justice of the peace in business to which Representative Moore replied that as you increase the value of the case you increase the complexity of the type of case. Representative Lory questioned the salary of the attorney to preside over the small claims court and Representative Scully stated this is also an attempt to dry up the justice of the peace system, especially since most are lay people. He would love to have the salary raised higher. Following additional discussion on the bill the hearing was closed.

Motion to adjourn carried and the meeting adjourned at 10:45 AM.

REPRESENTATIVE HERB HUENNEKENS
CHAIRMAN

HH:pb



MONTANA CHAMBER OF COMMERCE

February 18, 1975

RECOMMENDED AMENDMENTS HB 528

SMALL CLAIMS COURT BILL

Page 4, Section 8, Subsection 3, line 23.

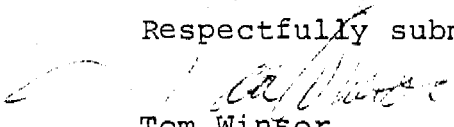
Insert the new material after the word "employees" or directors

Page 5, Section 8, strike subparagraph 5

The first amendment we recommend because a director of a corporation is not necessarily an employee of a corporation.

The second amendment we recommend because the function of a Small Claims Court is to save money for all parties involved. This would effectively eliminate assigned consumer paper from the Small Claims Court. Lendors should have access to this, and we believe they are effectively limited by Section 8, subparagraph 6, which limits the number of claims that any party may file in any calendar year.

Respectfully submitted,


Tom Winsor
Public Affairs Manager
Montana Chamber of Commerce

NAME Frank A. Smith Bill No. 112

ADDRESS 115-22 Ave Date 11-22-40

WHOM DO YOU REPRESENT? Democratic Party

SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1 long eye
e right count

all statewide candidates. Representative Halvorson stated that no state legislature will ever put a limit on itself.

Representative Meloy moved DO PASS AS AMENDED.
Motion carried 8 to 7 by a roll call vote.

HOUSE BILL NO. 126 Representative Meloy moved to leave this on the table as we hadn't voted to remove it from the table. Representative Meloy explained that the way the bill was written it could be used as a funnel device and set up a subsidiary.

HOUSE BILL NO. 617 Representative Lory moved DO NOT PASS. A substitute motion by Representative Moore of DO PASS was made.

Representative Vincent stated the primary philosophy in regard to the process is there is a political question. Lobbyists and legislators are involved in a political process. Legislators are held in account by themselves. Lobbyists should be held accountable too. Several respected legislators say there is no doubt that they have been lied to by lobbyists. There are always dangers inherent in a process like this. Another safeguard is that other members are watchdogs of other legislators.

Representative Lory stated he was troubled by some terms. How could you enforce this legislation to which he was advised 43-801 and 802 are procedure to file a complaint with the attorney general.

Representative Halvorson spoke against this bill, stating you have to have lobbyists, and you have to get along with them. All you have to do is complain about them and they won't be back.

Representative Vincent moved to amend by inserting the word "registered" in front of "lobbyists" where ever it occurs. Motion carried by a roll call vote of 7 to 5.

Representative Moore stated that he sees a problem with the bill in that it is too cumbersome. If it is necessary to censure lobbyists this is a right we have as legislators.

Representative Yardley stated he considers due process of law as a fundamental right if in a court proceeding where rights of evidence are presented. Also we should have a right to appeal, if you really believe in due process of law. Much discussion followed.

Motion DO PASS AS AMENDED failed 9 to 6 by a roll call vote. Committee report will come out DO NOT PASS AS AMENDED.

HOUSE BILL NO. 528 This is the small claims court bill by Representative Richards. Meeting opened on this with discussion as

to how often a small claims court should be held. Representative Scully moved to amend page 2, line 19 by setting the days for small claims courts to be held the same as the district court.

Representative Scully moved to amend page 6, line 4 to read: "complaint/affidavit", also page 7, line 7 insert "order of the court". Motion to amend carried.

Representative Meloy moved to amend page 4, lines 17 and 18 by striking following "judgment" the remainder of the two lines.

Following additional discussion Representative Scully moved DO PASS AS AMENDED. Motion carried unanimously.

HOUSE BILL NO. 262 Representative Meloy read through a list of amendments as prepared by Representative Rasmussen who was a subcommittee of one to study this bill. Representative Rasmussen absent.

Representative Vincent objected to the amendment to page 11, line 9 changing (1) to (2). This amendment was deleted. Amendments read by Representative Meloy were to page 5, line 19, page 8, line 19, page 9, line 8, page 11, line 17, page 11, line 16, page 16, line 18, page 18, line 18, page 21, line 8, page 21, line 21, page 23, line 2, page 25, line 12, page 30, lines 4 and 5, page 32, line 13 and page 32, line 20.

Motion to adopt the above amendments carried unanimously.

Representative Lester moved DO PASS AS AMENDED. Motion carried 8 to 4 by a roll call vote.

A motion to adjourn carried and meeting adjourned at 10:20 PM.

REPRESENTATIVE HERB HUENNEKENS
CHAIRMAN

HH:pb

1 HOUSE BILL NO. 528

2 INTRODUCED BY RICHARDS, SCULLY, JAMES MOORE,

3 HARPER, WILLIAMS, PALMER, MCFADDEN, LYNCH, MCKITTRICK, MELOY,

4 HUENNEKENS, YARDLEY, FEDERICO, KIMBLE, SLOAN, GILLIGAN,

5 FISHEAUGH, TRAVIS, VINCENT, MAGONE, GUNDERSON, STOLTZ, FAGG,

6 SHELDEN, LUEBECK, KEMMIS, R. BAETH, KUMMERFELDT, JACOBSEN,

7 BARDANOUVE, DAY, TEAGUE, BRADLEY, JOHNSON, KELLY, DUSSAULT,

8 BENGTON, WOLFE, KENDALL, O'CONNELL, SOUTH, HELMBRECHT,

9 MANUEL, FINLEY, GWYNN, TROPILA, LESTER, STAIGMILLER,

10 THOMAS, DRISCOLL, HOLMES, FLEMING, BRAND, GERKE, HERLEVI

11
12 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SMALL
13 CLAIMS COURTS IN THE STATE OF MONTANA."14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:16 Section 1. Small claims court authorized. There may
17 be created within the jurisdiction of the district court of
18 any county of the state of Montana a separate court, known
19 as the "Small Claims Court".20 Section 2. Creation of small claims court. A small
21 claims court may be created by ~~an order of the district~~
22 ~~court or~~ a resolution passed by the board of county
23 commissioners AFTER CONSULTATION WITH THE DISTRICT COURT
24 JUDGES OF THE JUDICIAL DISTRICT IN WHICH SUCH COUNTY IS
25 LOCATED, or by county initiative as provided in Title 37,1 chapter 3, R.C.M. 1947. Upon such order or passage of the
2 resolution or initiative, the judge of the appropriate
3 judicial district shall, by court order, establish a small
4 claims court under the provisions of this act. When the
5 order is filed with the clerk of the district court of the
6 appropriate county the clerk of the district court becomes
7 the clerk of the small claims court.8 Section 3. Duration of small claims court. A small
9 claims court created under this act continues in existence
10 until abolished by ~~resolution of the board of county~~
11 ~~commissioners of the appropriate county.~~ THE SAME MEANS BY
12 WHICH IT WAS FORMED UNDER SECTION 2 OF THIS ACT. ANY SMALL
13 CLAIMS COURT MAY BE ABOLISHED BY COUNTY INITIATIVE AS
14 PROVIDED IN SECTION 2.15 Section 4. Appointment of judge -- salary --
16 qualifications. (1) The judges of the judicial district in
17 which a small claims court has been created shall appoint a
18 judge of the small claims court who shall:

19 (a) take the oath required of judges;

20 (b) serve at the pleasure of the district court
21 judges;22 (c) be paid a salary set by the ~~board of county~~
23 ~~commissioners but not less than ten thousand dollars~~
24 ~~(\$10,000) per year~~ DISTRICT COURT JUDGE; and

25 (d) be an attorney licensed to practice law in the

HOUSE BILL NO. 528

INTRODUCED BY RICHARDS, SCULLY, JAMES MOORE,

HARPER, WILLIAMS, PALMER, MCFADDEN, LYNCH, MCKITTRICK, MELOY,

HUENNEKENS, YARDLEY, FEDERICO, KIMBLE, SLOAN, GILLIGAN,

FISHEAUGH, TRAVIS, VINCENT, MAGONE, GUNDERSON, STOLTZ, FAGG,

SHELDEN, LUEBECK, KEMMIS, R. BAETH, KUMMERFELDT, JACOBSEN,

BARDANOUVE, DAY, TEAGUE, BRADLEY, JOHNSON, KELLY, DUSSAULT,

BENGTSON, WOLFE, KENDALL, O'CONNELL, SOUTH, HELMBRECHT,

MANUEL, FINLEY, GWYNN, TROPILA, LESTER, STAIGMILLER,

THOMAS, DRISCOLL, HOLMES, FLEMING, BRAND, GERKE, HERLEVI

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SMALL
CLAIMS COURTS IN THE STATE OF MONTANA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Small claims court authorized. There may
be created within the jurisdiction of the district court of
any county of the state of Montana a separate court, known
as the "Small Claims Court".

Section 2. Creation of small claims court. A small
claims court may be created by ~~an order of the district~~
~~court or~~ a resolution passed by the board of county
commissioners AFTER CONSULTATION WITH THE DISTRICT COURT
JUDGES OF THE JUDICIAL DISTRICT IN WHICH SUCH COUNTY IS
LOCATED, or by county initiative as provided in Title 37,

chapter 3, R.C.M. 1947. Upon such order or passage of the
resolution or initiative, the judge of the appropriate
judicial district shall, by court order, establish a small
claims court under the provisions of this act. When the
order is filed with the clerk of the district court of the
appropriate county the clerk of the district court becomes
the clerk of the small claims court.

Section 3. Duration of small claims court. A small
claims court created under this act continues in existence
until abolished by ~~resolution of the board of county~~
~~commissioners of the appropriate county.~~ THE SAME MEANS BY
WHICH IT WAS FORMED UNDER SECTION 2 OF THIS ACT. ANY SMALL
CLAIMS COURT MAY BE ABOLISHED BY COUNTY INITIATIVE AS
PROVIDED IN SECTION 2.

Section 4. Appointment of judge -- salary --
qualifications. (1) The judges of the judicial district in
which a small claims court has been created shall appoint a
judge of the small claims court who shall:

(a) take the oath required of judges;

(b) serve at the pleasure of the district court
judges;(c) be paid a salary set by the ~~board of county~~
~~commissioners but not less than ten thousand dollars~~
~~(\$10,000) per year~~ DISTRICT COURT JUDGE; and

(d) be an attorney licensed to practice law in the

1 state of Montana.

2 (2) The judge of the district court may appoint more
3 than one (1) small claims court judge for any small claims
4 court and the salary shall be prorated among the judges
5 appointed.

6 Section 5. Location--office hours--duties of judge.
7 The small claims court shall be located in ~~the courthouse of~~
8 the appropriate county DISTRICT and shall be open ~~during all~~
9 ~~judicial days and during regular office hours~~ AS REQUIRED BY
10 THE DISTRICT JUDGE. In the event that more than one (1)
11 small claims court judge has been appointed, the judges so
12 appointed may divide their responsibility hereunder. The
13 small claims court judge shall assist any claimant in
14 preparing an affidavit or may direct the clerk of court to
15 provide such assistance.

16 Section 6. Multi-county small claims courts. Where
17 there is more than one county in the judicial district and
18 the county commissioners of more than one county in that
19 district create small claims courts, the district judges may
20 provide that the same judge of small claims court may
21 preside over more than one of the small claims courts in the
22 judicial district. In such cases the salary of the small
23 claims court judge shall be prorated among the counties in
24 which he presides. The judge shall be entitled to collect
25 mileage for the distance actually traveled when required to

1 convene small claims court in more than one county, pursuant
2 to section 59-801.

3 Section 7. Act to be liberally construed. It is the
4 purpose of this act to provide a speedy remedy in claims
5 falling hereunder, and to promote a forum in which such
6 claims may be heard and disposed of without the necessity of
7 formal trial. For this reason, the provisions hereof should
8 be liberally construed to provide an informal, but
9 equitable, means of justice, and the judges appointed
10 hereunder are required to assist all parties before them to
11 obtain substantial justice.

12 Section 8. Jurisdiction. (1) The small claims court
13 has original jurisdiction in all actions for the recovery of
14 money or specific personal property when such action arises
15 out of a contract, express or implied, and the amount of the
16 claim, exclusive of costs, does not exceed ~~one--thousand~~
17 ~~dollars--(\$1,000)~~ ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)
18 AND THE DEFENDANT CAN BE SERVED WITHIN THE COUNTY OR
19 COUNTIES FOR WHICH THE SMALL CLAIMS COURT HAS BEEN CREATED.
20 More than one (1) claim may be joined, if all claims joined
21 would separately meet the requirements for jurisdiction in
22 the small claims court and the total value of money claimed
23 or property sought does not exceed ~~one-thousand-dollars~~
24 ~~(\$1,000)~~ ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500).

25 (2) A district court judge may require any action

1 filed in district court to be removed to the small claims
2 court, if the amount in controversy does not exceed one
3 thousand--dollars--(~~\$1,000~~) ONE THOUSAND FIVE HUNDRED DOLLARS
4 (\$1,500). The small claims court shall hear any action so
5 removed from the district court.

6 Section 9. Parties -- representation. (1) Parties in
7 the small claims court may be individuals, partnerships,
8 corporations, unions, associations, or any other kind of
9 organization or entity.

10 ~~(2) No party shall be represented by an attorney in~~
11 ~~the small claims court.~~

12 (2) A PARTY MAY NOT BE REPRESENTED BY AN ATTORNEY
13 UNLESS ALL PARTIES ARE REPRESENTED BY AN ATTORNEY IN A SMALL
14 CLAIMS COURT, EXCEPT AS SET FORTH IN SUBSECTION (3) HEREIN.

15 ~~(3)(2)(3)~~ An individual shall MAY SHALL represent
16 himself in the small claims court. A partnership shall MAY
17 SHALL be represented by a partner or one of its employees.
18 A union shall MAY SHALL be represented by a union member or
19 union employee. A corporation shall MAY SHALL be
20 represented by one of its employees. An association shall
21 MAY SHALL be represented by one of its members or by an
22 employee of the association. Any other kind of organization
23 or entity shall MAY SHALL be represented by one of its
24 members or employees.

25 ~~(4)(3)(4)~~ Only a party, natural or otherwise, who has

1 been a party to the transaction with the defendant for which
2 the claim is brought may file and prosecute a claim in the
3 small claims court.

4 ~~(5)(4)(5)~~ No party may file an assigned claim in the
5 small claims court.

6 ~~(6)(5)(6) No party shall file more than two claims~~
7 ~~within any calendar week nor more than ten claims in any~~
8 ~~calendar year in the small claims court.~~

9 ~~(7)(6)(7)(6)~~ Notwithstanding any other provision of
10 this section, an executor or administrator of a decedent's
11 estate, a guardian, or a conservator may be a party in the
12 small claims court.

13 Section 10. Venue. Proper venue for actions commenced
14 in small claims court is the same as that provided by law
15 for civil actions commenced in district court.

16 Section 11. Commencement of actions. Actions in small
17 claims court shall be commenced by filing an affidavit with
18 the clerk of court. The clerk of court shall provide forms
19 for the affidavits, which shall be in substantially the
20 following form:

21 "In the Small Claims Court of the _____ Judicial
22 District in and for the County of _____, State of
23 Montana.

24 _____,
25 Plaintiff

Doc. _____ No. _____

26 vs.

PLAINTIFF'S COMPLAINT,
HB 528

AFFIDAVIT NOTICE TO
DEPENDANT, SEEKING
MONEY DAMAGES

Defendant

Plaintiff states that defendant(s) owe and should be
ordered to pay to me the sum of _____, because on
_____ at _____, the defendant(s)
(date) (place)

Plaintiff declares that the defendant or defendants are
not a "person in military service" or "person in the
military service of the United States" as defined in Sec.
101 of the Soldier's and Sailor's Relief Act, 1940.

~~I have filed small claims within the past calendar
week.~~

~~I have filed small claims within the past calendar
year.~~

To the best of my knowledge and belief, the defendant named
above resides at the following address, or the following is
the business address:

My printed name and printed address are as follows:

~~I elect to have the notice served upon the
defendant personally by mail.~~

Signed in my presence

Signature: _____

Clerk or Deputy

Today's date: _____

ORDER OF THE COURT/NOTICE TO DEFENDANT

This claim has been filed against you. You must appear
before this court on _____ at _____ at _____
(date) (time) (location)

If you do not appear, a judgment may be entered against you.

Costs of the action also may be charged against you. You
should read the information on the back of this claim and
notice. If you have any questions about the procedure, you
may contact the Clerk of the Court in person at

(location of court)

or by telephone at _____.

(number)

Clerk of the Court

By: _____

Section 12. Order of court--contents. (1) Upon filing
the affidavit and payment of the fee hereinafter provided,
the clerk of court shall cause to be delivered to the
sheriff of the county of the defendant's residence a copy of
the affidavit together with the original and a copy of an
order issued by the court, directed to the defendant, and

directing the defendant to pay the claim set forth in the affidavit, or deliver up the property described, or, in the alternative, to appear and answer the claim set forth in the affidavit.

(2) The order shall:

(a) specify the time, date, and place set for hearing the claim;

(b) state that if the defendant fails to appear at the hearing and has not satisfied the claim, judgment will be entered against him in the amount or for the relief claimed, for costs; and

(c) be signed by the clerk of court and bear the seal of the court.

Section 13. Service on defendant. The original order shall be shown to the defendant and a copy of it along with a copy of the affidavit shall be served upon the defendant by the sheriff in the same manner provided by law for service of process in civil actions in district court. The provisions of law relating to sheriff's fees are applicable to this section.

Section 14. Hearing date--how set. The date for the appearance of the defendant to be set forth in the order shall be determined by the clerk of court in accordance with rules adopted by the small claims judge, and shall not be more than thirty (30) nor less than ten (10) days from the

date of the order. Service of the order and copy of the affidavit shall be made upon the defendant not less than seven (7) days prior to the date set for his appearance by the order. If the order is not timely served, plaintiff may have a new appearance date set by the clerk and a new order issued and delivered to the sheriff, and, if necessary, repeated orders may be issued at any time within one year after the commencement of the action.

Section 15. Return of service. The sheriff, after effecting service, shall make return upon the original order and file it with the clerk of court.

Section 16. Defendant's counterclaim -- answer.
(1) If the defendant wishes to assert a counterclaim against the plaintiff he shall file a written answer setting forth his counterclaim against the plaintiff and shall cause the answer to be served upon the plaintiff not less than seventy-two (72) hours before the date set for the hearing. Service shall be made in the same manner in which service is made upon the defendant.

(2) A counterclaim or set-off may not exceed ~~one thousand--dollars--(\$1,000)~~ ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500). If a counterclaim or set-off is asserted in excess of ~~one-thousand--dollars--(\$1,000)~~ ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500), the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but

1 the court shall limit its determination of the counterclaim
2 or set-off only to the question of whether plaintiff's claim
3 is discharged thereby, leaving defendant to prosecute the
4 balance of his claim in appropriate district court action.

5 Section 17. Attachment--execution. Attachment or
6 prejudgment garnishment is not available in actions brought
7 in small claims court. Proceedings to enforce or collect a
8 judgment are governed by the laws relating to executions
9 upon district court judgments.

10 Section 18. Proceedings informal--court reporters. If
11 the action is tried to the court, the proceedings shall be
12 informal to the extent possible in order to dispense speedy
13 justice to the parties. ~~In All cases SHALL BE tried--to--the~~
14 ~~court--SITTING--WITHOUT--A--JURY--AND--a~~ A reporter is not
15 necessary unless the judge finds the issues sufficiently
16 complex that a record is desirable, in which case he shall
17 make arrangements with a court reporter of the district
18 court to take the testimony. The judge shall make findings
19 of fact sufficient to establish in full the basis of his
20 judgment, and shall file them with his judgment. ~~if-a-jury~~
21 ~~is-empowered, it shall try all issues of fact, and--in--such~~
22 ~~case--there--shall--be--a--court--reporter.~~ IF A JURY IS
23 EMPANELED, IT SHALL TRY ALL ISSUES OF FACT, AND IN SUCH CASE
24 THERE SHALL BE A COURT REPORTER.

25 SECTION 19. SMALL CLAIMS JURY -- WAIVER -- REQUEST.

1 THE PLAINTIFF, BY FILING THE AFFIDAVIT FOR A PROCEEDING IN
2 SMALL CLAIMS COURT WAIVES THE RIGHT TO JURY TRIAL.
3 DEFENDANT MAY REQUEST A JURY UPON-A-GENERAL-DENIAL, PROVIDED
4 SUCH REQUEST IS MADE NOT LESS THAN FORTY-EIGHT (48) HOURS
5 PRIOR TO THE DATE SET FOR HEARING. IF DEFENDANT PLEADS A
6 COUNTERCLAIM OR SET-OFF, HE, TOO, WAIVES A JURY TRIAL. IF A
7 JURY IS REQUESTED, IT SHALL BE EMPANELED IN THE SAME FASHION
8 AS PROVIDED FOR DISTRICT COURT JURIES IN CIVIL CASES
9 INVOLVING LESS THAN TEN THOUSAND DOLLARS (\$10,000).

10 Section ~~19~~ 20. Evidence--subpoena power. Both parties
11 have the right to offer evidence, written and oral, and the
12 judge may direct the production of evidence as he deems
13 appropriate. The small claims court has the subpoena power
14 granted to district courts in civil cases.

15 Section ~~20~~ 21. Entry of judgment. Upon the conclusion
16 of a case tried to the court the judge shall make his
17 findings and enter judgment. JUDGMENT SHALL BE ENTERED UPON
18 A JURY VERDICT IN THE SAME MANNER AS IS PROVIDED FOR
19 DISTRICT COURT JURY TRIALS.

20 Section ~~21~~ 22. Appeals. If either party is
21 dissatisfied with the judgment of the small claims court he
22 may appeal to the district court of the county where the
23 judgment was rendered, in the same fashion as appeals in
24 other civil actions. Any such appeal shall be tried de novo
25 without-a-jury.

1 In the event that the parties are represented by
2 counsel on appeal, the judge may grant the prevailing party,
3 in addition to costs, reasonable attorney fees.

4 Section ~~22~~ 23. Fees--cost. (1) The clerk of court
5 shall collect a fee of five dollars (\$5):

6 (a) from the plaintiff upon the filing of the
7 affidavit;

8 (b) from the defendant upon the filing of a written
9 answer, ~~and~~

10 ~~(c) from the losing party upon the filing of a~~
11 ~~judgment.~~

12 (2) The laws relating to paupers' affidavits apply to
13 actions before the small claims courts.

14 (3) The prevailing party in an action before the small
15 claims court is entitled to costs.

16 Section ~~23~~ 24. It is the intent of the legislature
17 that if a part of this act is invalid, all valid parts that
18 are severable from the invalid part remain in effect. If a
19 part of this act is invalid in one or more of its
20 applications, the part remains in effect in all valid
21 applications that are severable from the invalid
22 applications.

-End-